

HOUSE BILL No. 1727

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-14-12-1; IC 13-30.

Synopsis: Enforcement of environmental laws. Requires money collected as certain environmental civil penalties to be deposited in the state general fund instead of being credited to the environmental management special fund. Requires: (1) the department of environmental management to determine if the possible violation of an environmental law is a minor violation that may be corrected under the law concerning minor violations; and (2) the commissioner of the department to issue written findings of fact that show why a violation may not be corrected under the law concerning minor violations before the department may take any enforcement action against the alleged violator. Prohibits the department of environmental management from
(Continued next page)

Effective: July 1, 1999.

Frenz, Sturtz

January 26, 1999, read first time and referred to Committee on Environmental Affairs.



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releasing any information to the public concerning an alleged environmental violation or any enforcement action to be taken to correct an alleged environmental violation until the alleged violator has been: (1) notified of the alleged violation; and (2) given a reasonable opportunity to respond to the notification. Provides that, in determining the amount of a civil penalty to assess against a person who violates environmental laws, the person who imposes the penalty must consider: (1) the violator's history of previous violations of environmental laws; (2) the seriousness of the violation, including any irreparable harm to the environment and hazard to the health and safety of the public; and (3) the demonstrated good faith of the violator to achieve rapid compliance after notification of the violation.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE BILL No. 1727

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 13-14-12-1 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The officials
3 collecting the following shall remit the money to the treasurer of state:
4 ~~(1) Money collected under the following:~~
5 ~~(A) IC 13-30-4-1.~~
6 ~~(B) IC 13-30-4-2.~~
7 ~~(C) IC 13-30-5-1.~~
8 ~~(2) (1) Fees collected under IC 13-16-1-2 through IC 13-16-1-5.~~
9 ~~(3) (2) Fees collected under IC 13-22-4-5.~~
10 (b) The treasurer of state shall credit the money to the
11 environmental management special fund.
12 SECTION 2. IC 13-30-3-2 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. If an investigation
14 discloses a possible violation, the commissioner shall proceed under:
15 (1) **sections 2.3 and section** 3 of this chapter; or



(2) first **sections 2.3 and section 3** of this chapter and then section 4 of this chapter.

SECTION 3. IC 13-30-3-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 2.3. (a) If an investigation discloses a possible violation, the department shall determine if the possible violation is a minor violation that may be corrected under IC 13-30-7.**

(b) If the department determines that the possible violation is not a minor violation that may be corrected under IC 13-30-7, before the department may take any enforcement action against the alleged violator the commissioner must issue written findings of fact that show why the violation may not be corrected under IC 13-30-7.

SECTION 4. IC 13-30-3-3.3 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 3.3. The department may not release any information to the public concerning an alleged violation or any enforcement action to be taken to correct an alleged violation until the alleged violator has been:**

- (1) notified of the alleged violation under section 3 of this chapter; and**
- (2) given a reasonable opportunity to respond to the notification.**

SECTION 5. IC 13-30-3-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 11. (a) An order of the commissioner under this chapter may do any of the following:**

- (1) Include a direction to cease and desist from violations of the following:**
 - (A) Environmental management laws.**
 - (B) Air pollution control laws.**
 - (C) Water pollution control laws.**
 - (D) A rule adopted by one (1) of the boards.**
- (2) Impose monetary penalties in accordance with the following:**
 - (A) Environmental management laws.**
 - (B) Air pollution control laws.**
 - (C) Water pollution control laws.**
- (3) Mandate corrective action, including corrective action to be taken beyond the boundaries of the area owned or controlled by the person to whom the order is directed, to alleviate the violation.**
- (4) Revoke a permit or condition or modify the terms of a permit.**

(b) In determining the amount of a monetary penalty under subsection (a)(2), the commissioner shall consider the following:



(1) The violator's history of previous violations of the following:

(A) Environmental management laws.

(B) Air pollution control laws.

(C) Water pollution control laws.

(2) The seriousness of the violation, including any irreparable harm to the environment and hazard to the health and safety of the public.

(3) The demonstrated good faith of the violator to achieve rapid compliance after notification of the violation.

SECTION 6. IC 13-30-4-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Subject to IC 13-14-6 and except as provided in IC 13-23-14-2 and IC 13-23-14-3, a person who violates:

(1) any provision of:

(A) environmental management laws;

(B) air pollution control laws;

(C) water pollution control laws;

(D) IC 13-18-14-1; or

(E) a rule or standard adopted by one (1) of the boards; or

(2) any determination, permit, or order made or issued by the commissioner under:

(A) environmental management laws or IC 13-7 (before its repeal);

(B) air pollution control laws or IC 13-1-1 (before its repeal); or

(C) water pollution control laws or IC 13-1-3 (before its repeal);

is liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000) per day of any violation.

(b) The department may:

(1) recover the civil penalty described in subsection (a) in a civil action commenced in any court with jurisdiction; and

(2) request in the action that the person be enjoined from continuing the violation.

(c) In determining the amount of a civil penalty under this section, the department and a court shall consider the following:

(1) The violator's history of previous violations of :

(A) any provision of:

(i) environmental management laws;

(ii) air pollution control laws;

(iii) water pollution control laws;



(iv) IC 13-18-14-1; or

(v) a rule or standard adopted by one (1) of the boards;
or

(B) any determination, permit, or order made or issued by
the commissioner under:

(i) environmental management laws or IC 13-7 (before
its repeal);

(ii) air pollution control laws or IC 13-1-1 (before its
repeal); or

(iii) water pollution control laws or IC 13-1-3 (before its
repeal).

(2) The seriousness of the violation, including any irreparable
harm to the environment and hazard to the health and safety
of the public.

(3) The demonstrated good faith of the violator to achieve
rapid compliance after notification of the violation.

(d) Money collected under this section shall be remitted to the
treasurer of state for deposit in the state general fund.

SECTION 7. IC 13-30-4-2 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) Subject to
IC 13-14-6 and except as provided in IC 13-23-14-2 and
IC 13-23-14-3, a person who:

(1) is named in or directed by an emergency order under
IC 13-14-10-1; and

(2) violates the order;

is liable for an additional civil penalty not to exceed five hundred
dollars (\$500) per hour of violation.

(b) The additional civil penalty described in subsection (a) shall be
assessed in an action brought by the commissioner in any court with
jurisdiction.

(c) Money collected under this section shall be remitted to the
treasurer of state for deposit in the state general fund.

SECTION 8. IC 13-30-5-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Except as
provided in IC 13-23-14-2 and IC 13-23-14-3, a person who obstructs,
delays, resists, prevents, or interferes with:

(1) the department; and

(2) the department's personnel or designated agent;

in the performance of an inspection or investigation performed under
IC 13-14-2-2 commits a Class C infraction. Each day of violation of
this section constitutes a separate infraction.

(b) Money collected for a violation of this section shall be



1 remitted to the treasurer of state for deposit in the state general
2 fund.

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